

1 measures to avoid or minimize any such delay. Within five (5)  
2 business days after notifying EPA by telephone, Respondents shall  
3 provide written notification fully describing: a) the nature of  
4 the delay; b) any asserted justification for the delay; c) any  
5 reason why Respondents should not be held strictly accountable  
6 for failing to comply with any relevant requirements of this  
7 Order; d) the measures planned and taken to minimize the delay;  
8 and e) a schedule for implementing the measures that will be  
9 taken to mitigate the effect of the delay. Increased costs or  
10 expenses associated with implementation of the activities called  
11 for in this Order are not a justification for any delay in  
12 performance.

### 13 XXIII. ASSURANCE OF ABILITY TO COMPLETE WORK

14 A. Respondents shall demonstrate their ability to complete  
15 the Work required by this Order and to pay all claims that arise  
16 from the performance of the Work by obtaining and presenting to  
17 EPA for review and approval within thirty (30) days of the  
18 effective date of this Order, one of the following: (i) a  
19 performance bond; (ii) a letter of credit; (iii) a guarantee by a  
20 third party; or (iv) internal financial information sufficient to  
21 allow EPA to determine that Respondents have sufficient assets  
22 available to perform the Work. Respondents shall demonstrate  
23 financial assurance in an amount not less than two and one-half  
24 million dollars (\$2,500,000.00). If Respondents seek to  
25 demonstrate ability to complete the Work by means of internal  
26 financial information, or by guarantee of a third party, they  
27 shall resubmit such information annually, on the anniversary of  
28 the effective date of this Order. If EPA determines that such

1 financial information is inadequate, Respondents shall, within  
2 thirty (30) days after receipt of EPA's notice of determination,  
3 obtain and present to EPA for approval one of the other three  
4 forms of financial assurance listed above in an amount not less  
5 than two and one-half million dollars (\$2,500,000.00).

6 B. A least seven (7) days prior to commencing any work at  
7 the Site pursuant to this Order, Respondents shall submit to EPA  
8 a certification that Respondents or their contractors and subcon-  
9 tractors have adequate insurance coverage or have indemnification  
10 for liabilities for injuries or damages to persons or property  
11 which may result from the activities to be conducted by or on  
12 behalf of Respondents pursuant to this Order. Respondents shall  
13 ensure that such insurance or indemnification is maintained for  
14 the duration of the performance of the Work required by this  
15 Order.

16 **XXIV. UNITED STATES NOT LIABLE**

17 A. The United States, including but not limited to its  
18 agencies, divisions, departments, agents, employees and other  
19 representatives, by issuance of this Order, assumes no liability  
20 for any injuries or damages to persons or property resulting  
21 entirely or partially from acts or omissions of any or all  
22 Respondents or their directors, officers, employees, agents,  
23 representatives, successors, assigns, contractors, consultants or  
24 any other person acting on their behalf in carrying out any  
25 action or activity pursuant to this Order.

26 B. The United States, including but not limited to its  
27 agencies, divisions, departments, agents, employees and other  
28 representatives, shall not be deemed to be a party to any

1 contract entered into by any or all of the Respondents or their  
2 directors, officers, employees, agents, representatives, succes-  
3 sors, assigns, contractors, consultants or any other person  
4 acting on their behalf in carrying out any action or activity  
5 pursuant to this Order.

6 C. The Respondents shall save and hold harmless the United  
7 States, including but not limited to its agencies, divisions,  
8 departments, agents, employees and other representatives, from  
9 any and all claims or causes of action or other costs incurred by  
10 the United States, including but not limited to attorneys fees  
11 and other expenses of litigation and settlement arising from or  
12 on account of acts or omissions of Respondents or their  
13 directors, officers, employees, agents, representatives,  
14 successors, assigns, contractors, consultants or any other person  
15 acting on their behalf in carrying out any action or activity  
16 pursuant to this Order.

17 D. Notwithstanding any approvals, permits, or other  
18 permissions which may be granted by the United States or other  
19 governmental entities or any other action by EPA, Respondents  
20 remain fully liable for any costs or damages arising from or  
21 relating to their acts or omissions or the acts of omissions of  
22 any of their contractors, subcontractors, or any other person  
23 acting on their behalf in the performance of the Work or their  
24 failure to perform fully or complete the Work.

#### 25 XXV. ENFORCEMENT AND RESERVATION

26 A. EPA reserves the right to bring an action against any or  
27 all Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607,  
28 for recovery of any response costs incurred by the United States

1 related to this Order and not reimbursed by Respondents, as well  
2 as any other past and/or future costs incurred by the United  
3 States pursuant to CERCLA in connection with the Site. This  
4 reservation shall include but not be limited to past costs,  
5 future costs, direct costs, indirect costs, the costs of  
6 oversight, the costs of compiling the cost documentation to  
7 support oversight cost demand, as well as accrued interest as  
8 provided in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). In  
9 addition, EPA reserves the right to bring an action against any  
10 and all Respondents for injunctive relief and/or civil penalties  
11 under Section 106 of CERCLA, 42 U.S.C. § 9606, and/or for treble  
12 damages under Section 107(c)(3) of CERCLA, 42 U.S.C. §  
13 9607(c)(3).

14 B. Notwithstanding any other provision of this Order, at any  
15 time during the response action, EPA may perform its own studies,  
16 complete the response action (or any portion of the response  
17 action) and seek reimbursement from Respondents for its costs, or  
18 seek any other appropriate relief.

19 C. Nothing in this Order shall preclude EPA from taking any  
20 additional enforcement action, including the modification of this  
21 Order or the issuance of additional orders, or additional removal  
22 or remedial actions as EPA deems necessary or from requiring  
23 Respondents in the future to perform additional activities  
24 pursuant to CERCLA, 42 U.S.C. § 9606(a), et seq., or any other  
25 applicable law. Respondents shall be liable, as provided in  
26 CERCLA Section 107(a), 42 U.S.C. § 9607(a), for the costs of any  
27 such additional actions.

28 D. Notwithstanding any provision of this Order, the United

1 States hereby retains all of its information gathering, inspec-  
2 tion, access and enforcement authorities and rights under CERCLA,  
3 RCRA and any other applicable statutes or regulations.

4 E. Nothing in this Order shall constitute or be construed as  
5 a release from any claim, cause of action or demand in law or  
6 equity against any person for any liability it may have arising  
7 out of or relating in any way to the Site.

8 F. If a court issues an order that invalidates any provision  
9 or this Order or finds that Respondents have sufficient cause not  
10 to comply with one or more provisions of this Order, Respondents  
11 shall remain bound to comply with all provisions of this Order  
12 not invalidated by the court's order.

#### 13 XXVI. ADMINISTRATIVE RECORD

14 A. Upon EPA's request, each Respondent shall submit to EPA  
15 all documents in its possession related to the selection of the  
16 response action for possible inclusion in the administrative  
17 record file.

#### 18 XXVII. CIVIL PENALTIES

19 Respondents shall be subject to civil penalties under  
20 Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than  
21 \$25,000 for each day in which Respondents willfully violate, or  
22 fail or refuse to comply with this Order without sufficient  
23 cause. In addition, failure to properly provide response action  
24 under this Order, or any portion hereof, without sufficient  
25 cause, may result in liability under Section 107(c)(3) of CERCLA,  
26 42 U.S.C. § 9607(c)(3), for punitive damages in an amount at  
27 least equal to, and not more than, three times the amount of any  
28 costs incurred by the United States as a result of such failure

1 to take proper action.

2 **XXVIII. EFFECTIVE DATE AND COMPUTATION OF TIME**

3 This Order shall be effective thirty-five (35) days after  
4 this Order is signed by the Director of the Hazardous Waste  
5 Management Division, EPA Region IX. Unless otherwise specified  
6 in this Order, all times for performance of ordered activities  
7 shall be calculated from this effective date.

8 **XXIX. SECTION HEADINGS**

9 The section headings set forth in this Order and its Table  
10 of Contents are included for convenience of reference only and  
11 shall be disregarded in the construction and interpretation of  
12 any of the provisions of this Order.

13 **XXX. OPPORTUNITY TO CONFER**

14 A. Respondents may, within fifteen (15) days after the date  
15 this Order is signed, request a conference with EPA Region IX's  
16 RPM and Assistant Regional Counsel concerning the provisions of  
17 this Order. If requested, the conference shall occur on April  
18 22, 1992 at EPA's Region IX office, 75 Hawthorne Street, San  
19 Francisco, California.

20 B. The purpose and scope of the conference shall be limited  
21 to issues involving the implementation of the response actions  
22 required by this Order and the extent to which Respondents intend  
23 to comply with this Order. This conference is not an evidentiary  
24 hearing, and does not constitute a proceeding to challenge this  
25 Order. It does not give Respondents a right to seek review of  
26 this Order or to seek resolution of potential liability. No  
27 official stenographic record of the conference will be made. If  
28 such conference is held pursuant to Respondent's request, each

1 Respondent may appear in person, or by an attorney or other  
2 representative.

3 C. Requests for a conference must be by telephone followed  
4 by written confirmation mailed that day to EPA's RPM.

5 XXXI. COMPLETION

6 A. Within thirty (30) days after Respondents conclude that  
7 all Work and other activities required by this Order have been  
8 fully performed, including but not limited to any nonroutine  
9 maintenance that may be required, (other than the record  
10 preservation activities required by Subpart XXI.D), Respondents  
11 shall so notify EPA in a Notice of Alleged Completion, including  
12 a brief outline of the basis for Respondents' conclusion. EPA  
13 may respond:

14 1. by identifying in writing to Respondents additional  
15 Work or other activities which may be required, in which case  
16 Respondents shall not resubmit any Notice of Alleged Completion  
17 until completing any such tasks identified by EPA, or

18 2. by scheduling an inspection to be attended by  
19 Respondents' and EPA's representatives. Within thirty (30) days  
20 of any such inspection, Respondents shall submit a report  
21 containing a certification by a registered professional engineer  
22 that the Work has been completed and a certification by  
23 Respondents' Project Coordinator that the Work and all other  
24 activities required by this Order (with the exception of the  
25 record preservation activities required by Subpart XXI.D) have  
26 been completed.

27 3. After receiving the report required by Paragraph  
28 XXXI.A.2, EPA may:

1 a. require such additional activities as may be  
2 necessary to complete the Work or otherwise comply with the  
3 requirements of this Order, or


4 b. based upon its knowledge at the time and  
5 Respondents' report with certifications, issue written  
6 notification to Respondents that the Work has been completed and  
7 all other requirements of the Order (except the record  
8 preservation activities required by Subpart XXI.D) have been met.

9 B. No notification, certification or submittal pursuant to  
10 this Section shall limit EPA's right to perform periodic reviews  
11 pursuant to Section 121(c) of CERCLA, 42 U.S.C. 9621(c), to  
12 pursue Respondents for violation of this Order, including any  
13 failure to meet the requirements of Subpart XXI.D or to take any  
14 action or require Respondents or any other party to take any  
15 action in accordance with CERCLA Sections 104, 106, or 107, 42  
16 U.S.C. 9604, 9606 or 9607, or any other provision of law.

17  
18 IT IS SO ORDERED on this 26<sup>th</sup> day of March, 1992.

19 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
20

21  
22 BY:

  
Jeffrey Zelikson, Director  
Hazardous Waste Management Division  
U.S. Environmental Protection Agency, Region IX  
23  
24  
25  
26  
27  
28



ATTACHMENT A

WORK SCHEDULE

ACTIVITY

DUE DATE

I. PRE-DESIGN ACTIVITIES

A. Selection of Project Coordinator

10 days after  
effective date  
of the Order

B. Selection of RD Architect/Engineer

30 days after  
effective date  
of Order

Finalize Contract

30 days after  
EPA approval of  
Selection

C. Remedial Design Workplan Draft

90 days after  
effective date  
of Order

Final Remedial Design Workplan

30 days after  
EPA approval of  
Draft

D. Site QA Project Plan (QAPP) Draft

90 days after  
effective date  
of Order

Final QAPP

30 days after  
EPA approval of  
Draft

E. Site Health & Safety Plan Draft

90 days after  
effective date  
of Order

Final Health & Safety Plan

30 days after  
EPA approval of  
Draft

F. Permitting Requirements Plan Draft

90 days after  
effective date  
of Order

Final Permitting Requirements Plan

30 days after  
EPA approval of  
Draft

ATTACHMENT A (Continued)

II. DESIGN ACTIVITIES

- |    |                                         |                                        |
|----|-----------------------------------------|----------------------------------------|
| A. | Conceptual Remedial Design Report Draft | 187 days after effective date of Order |
|    | Final Conceptual RD Report              | 30 days after EPA approval of Draft    |
| B. | Pre-Final Remedial Design Report Draft  | 347 days after effective date of Order |
|    | Final Pre-Final RD Report               | 30 days after EPA approval of Draft    |
| C. | Final Remedial Design Report Draft      | 467 days after effective date of Order |
|    | Final Remedial Design Report            | 30 days after EPA approval of Draft    |

III. CONSTRUCTION OF REMEDIAL ACTION WORK

- |    |                                                 |                                         |
|----|-------------------------------------------------|-----------------------------------------|
| A. | Selection of Independent Quality Assurance Team | 365 days after effective date of Order  |
|    | Finalize Selection                              | 30 days after EPA approval of Selection |
| B. | Selection of Remedial Action Engineer           | 365 days after effective date of Order  |
|    | Finalize Contract                               | 30 days after EPA approval of Selection |
| C. | Selection of RA Contractors/Subcontractors      | 440 days after effective date of Order  |
|    | Finalize Contracts                              | 30 days after EPA approval of Selection |